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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bill was introduced in Lok Sabha on 22nd December, 2003:—

BILL NO. 92 OF 2003

A Bill further to amend the Patents Act, 1970.

BE it enacted by Parliament in the Fifty-fourth Year of the Republic of India as follows:—

1. (1) This Act may be called the Patents (Amendment) Act, 2003.

Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Amendment of section 2.

39 of 1970.

2. In section 2 of the Patents Act, 1970 (hereinafter referred to as the principal Act), in sub-section (1),—

(a) after clause (ab), the following clause shall be inserted, namely:—

‘(aba) “Budapest Treaty” means the Budapest Treaty on the International Recognition of the Deposit of Micro organisms for the purposes of Patent

Procedure done at Budapest on 28th day of April, 1977, as amended and modified from time to time;';

(b) in clause (d), for the words, brackets and figures "notified as such under sub-section (1) of section 133", the words and figures "referred to as a convention country in section 133" shall be substituted;

(c) clause (g) shall be omitted;

(d) in clause (h),—

(i) in sub-clause (iii), after the words and figures "the Companies Act, 1956", the word "or" shall be inserted;

1 of 1956.

(ii) after sub-clause (iii), the following sub-clause shall be inserted, namely:—

"(iv) by an institution wholly or substantially financed by the Government,";

(iii) the words "and includes the Council of Scientific and Industrial Research and any other institution which is financed wholly or for the major part by the said Council" shall be omitted;

(e) for clause (l), the following clause shall be substituted, namely:—

'(l) "High Court", in relation to a State or Union territory, means the High Court having territorial jurisdiction in that State or Union territory, as the case may be,';

(f) for clauses (l) and (m), the following clause shall be substituted, namely:—

'(l) "Opposition Board" means an Opposition Board constituted under sub-section (4) of section 25;

(m) "patent" means a patent for any invention granted under this Act,'.

Amendment
of section 3.

3. In section 3 of the principal Act, in clause (d), for the words "new use", the words "mere new use" shall be substituted.

Omission of
section 5.

4. Section 5 of the principal Act shall be omitted.

Amendment
of section 7.

5. In section 7 of the principal Act,—

(a) after sub-section (1A), the following sub-section shall be inserted, namely:—

"(1B) The filing date of an application referred to in sub-section (1A) and its complete specification processed by the patent office as designated office or elected office shall be the international filing date accorded under the Patent Cooperation Treaty,";

(b) in sub-section (3), for the word "owner", the word "person" shall be substituted;

(c) for sub-section (4), the following sub-section shall be substituted, namely:—

"(4) Every such application (not being a convention application or an application filed under the Patent Cooperation Treaty designating India) shall be accompanied by a provisional or a complete specification.".

Amendment
of section 8.

6. In section 8 of the principal Act,—

(a) in sub-section (1),—

(i) for the words "within such period as the Controller may, for good and

sufficient reasons, allow", the words "within the prescribed period as the Controller may allow" shall be substituted;

(ii) in clause (b), for the words "up to the date of the acceptance of his complete specification filed in India", the words "up to the date of grant of patent in India" shall be substituted;

(b) for sub-section (2), the following sub-section shall be substituted, namely:—

"(2) At any time after an application for patent is filed in India and till the grant of patent or refusal to grant of a patent made thereon, the Controller may also require the applicant to furnish details, as may be prescribed, relating to the processing of the application in a country outside India, and in that event the applicant shall furnish to the Controller information available to him within such period as may be prescribed.".

7. In section 9 of the principal Act,—

Amendment
of section 9.

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

"(1) Where an application for a patent (not being a convention application or an application filed under the Patent Cooperation Treaty designating India) is accompanied by a provisional specification, a complete specification shall be filed within twelve months from the date of filing of the application, and if the complete specification is not so filed, the application shall be deemed to be abandoned.";

(b) in sub-section (2), the following proviso shall be inserted at the end, namely:—

"Provided that the period of time specified under sub-section (1) shall be reckoned from the date of filing of the earliest provisional specification.";

(c) for sub-section (3), the following sub-section shall be substituted, namely:—

"(3) Where an application for a patent (not being a convention application or an application filed under the Patent Cooperation Treaty designating India) is accompanied by a specification purporting to be a complete specification, the Controller may, if the applicant so requests at any time within twelve months from the date of filing of the application, direct that such specification shall be treated, for the purposes of this Act, as a provisional specification and proceed with the application accordingly.";

(d) in sub-section (4), for the words "the acceptance of the complete specification", the words "grant of patent" shall be substituted.

8. In section 10 of the principal Act,—

Amendment
of section 10.

(a) in sub-section (3) for the words "before the acceptance of the application", the words "before the application is found in order for grant of a patent" shall be substituted;

(b) in sub-section (4), in the proviso,—

(i) in clause (ii), for the words "the material to an authorised depository institution as may be notified by the Central Government in the Official Gazette", the words "the material to an international depository authority under the Budapest Treaty" shall be substituted;

(ii) for sub-clause (a), the following sub-clause shall be substituted, namely:—

"(a) the deposit of the material shall be made not later than the date of filing the patent application in India and a reference thereof shall be made in the specification within the prescribed period;"

(c) for sub-section (4A), the following sub-section shall be substituted, namely:—

“(4A) In case of an international application designating India, the title, description, drawings, abstract and claims filed with the application shall be taken as the complete specification for the purposes of this Act.”.

**Amendment
of section 11.** 9. In section 11 of the principal Act,—

(a) after sub-section (3), the following sub-section shall be inserted, namely:—

“(3A) Where a complete specification based on a previously filed application in India has been filed within twelve months from the date of that application and the claim is fairly based on the matter disclosed in the previously filed application, the priority date of that claim shall be the date of the previously filed application in which the matter was first disclosed.”;

(b) in sub-section (6), after the brackets and figure “(3),” the brackets, figure and letter “(3A),” shall be inserted.

**Amendment
of section
11A.** 10. In section 11A of the principal Act,—

(a) for sub-sections (1) to (3), the following sub-sections shall be substituted, namely:—

“(1) Save as otherwise provided, no application for patent shall ordinarily be open to the public for such period as may be prescribed.

(2) The applicant may, in the prescribed manner, request the Controller to publish his application at any time before the expiration of the period prescribed under sub-section (1) and subject to the provisions of sub-section (3), the Controller shall publish such application as soon as possible.

(3) Every application for a patent shall, on the expiry of the period specified under sub-section (1), be published, except in cases where the application —

(a) in which secrecy direction is imposed under section 35; or

(b) has been abandoned under sub-section (1) of section 9; or

(c) has been withdrawn three months prior to the period prescribed under sub-section (1).”;

(b) after sub-section (6), the following sub-section shall be inserted, namely:—

“(7) On and from the date of publication of the application for patent and until the date of grant of a patent in respect of such application, the applicant shall have the like privileges and rights as if a patent for the invention had been granted on the date of publication of the application:

Provided that the applicant shall not be entitled to institute any proceedings for infringement until the patent has been granted.”.

**Amendment
of section
11B.** 11. In section 11B of the principal Act,—

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) No application for a patent shall be examined unless the applicant or any other interested person makes a request in the prescribed manner for such examination within the prescribed period.”;

(b) sub-section (2) shall be omitted;

(c) for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) In case of an application in respect of a claim for a patent filed under

sub-section (2) of section 5 before the commencement of the Patents (Amendment) Act, 2003, a request for its examination shall be made in the prescribed manner and within the prescribed period by the applicant or any other interested person.”;

(d) in sub-section (4),—

(i) the words, brackets and figure “or sub-section (2)” shall be omitted;

(ii) for the proviso, the following proviso shall be substituted, namely:—

“Provided that —

(i) the applicant may, at any time after filing the application but before the grant of a patent, withdraw the application by making a request in the prescribed manner; and

(ii) in a case where secrecy direction has been issued under section 35, the request for examination may be made within the prescribed period from the date of revocation of the secrecy direction.”.

12. In section 12 of the principal Act,—

Amendment
of section 12.

(a) in sub-section (1), for the words, brackets, figures and letter “under sub-section (1) or sub-section (2) or sub-section (3) of section 11B, the application and specification and other documents shall be referred to by the Controller”, the words, brackets, figures and letter “under sub-section (1) or sub-section (3) of section 11B, the application and specification and other documents related thereto shall be referred at the earliest by the Controller” shall be substituted;

(b) in sub-section (2), for the words “a period of eighteen months from the date of such reference”, the words “such period as may be prescribed” shall be substituted.

13. In section 13 of the principal Act, in sub-section (3), for the words “it has been accepted”, the words “the grant of a patent” shall be substituted.

Amendment
of section 13.

14. For sections 14 and 15 of the principal Act, the following sections shall be substituted, namely:—

“14. Where, in respect of an application for a patent, the report of the examiner received by the Controller is adverse to the applicant or requires any amendment of the application, the specification or other documents to ensure compliance with the provisions of this Act or of the rules made thereunder, the Controller, before proceeding to dispose of the application in accordance with the provisions hereinafter appearing, shall communicate as expeditiously as possible the gist of the objections to the applicant and shall, if so required by the applicant within the prescribed period, give him an opportunity of being heard.

Substitution of
new sections for
sections 14 and
15.
Consideration
of the report
of examiner
by Controller.

15. Where the Controller is satisfied that the application or any specification or any other document filed in pursuance thereof does not comply with the requirements of this Act or of any rules made thereunder, the Controller may refuse the application or may require the application, specification or the other documents, as the case may be, to be amended to his satisfaction before he proceeds with the application and refuse the application on failure to do so.”.

Power of
Controller to
refuse or
require
amendment of
applications,
etc., in certain
cases.

15. In section 16 of the principal Act,—

Amendment
of section 16.

(a) in sub-section (1), for the words “before the acceptance of the complete specification”, the words “before the grant of the patent” shall be substituted;

(b) for the *Explanation*, the following *Explanation* shall be substituted, namely:—

Explanation.—For the purposes of this Act, the further application and the complete specification accompanying it shall be deemed to have been filed on the date on which the first mentioned application had been filed, and the further application shall be proceeded with as a substantive application and be examined when the request for examination is filed within the prescribed period.”.

Amendment
of section 17.

16. In section 17 of the principal Act, in sub-section (1), for the words “before acceptance of the complete specification”, the words “before the grant of the patent” shall be substituted.

Amendment
of section 18.

17. In section 18 of the principal Act,—

(a) in sub-section (1), for the words “to accept the complete specification”, the words “the application” shall be substituted;

(b) sub-section (4) shall be omitted.

Amendment
of section 19.

18. In section 19 of the principal Act, in sub-section (1), for the words and figures “by the foregoing provisions of this Act or of proceedings under section 25”, the words “under this Act” shall be substituted.

Substitution of
new section
for section
21.

19. For section 21 of the principal Act, the following section shall be substituted, namely:—

“21. (1) An application for a patent shall be deemed to have been abandoned unless, within such period as may be prescribed, the applicant has complied with all the requirements imposed on him by or under this Act, whether in connection with the complete specification or otherwise in relation to the application from the date on which the first statement of objections to the application or complete specification or other documents related thereto is forwarded to the applicant by the Controller.

Explanation.—Where the application for a patent or any specification or, in the case of a convention application or an application filed under the Patent Cooperation Treaty designating India any document filed as part of the application has been returned to the applicant by the Controller in the course of the proceedings, the applicant shall not be deemed to have complied with such requirements unless and until he has refiled it or the applicant proves to the satisfaction of the Controller that for the reasons beyond his control such document could not be refiled.

(2) If at the expiration of the period as prescribed under sub-section (1),—

(a) an appeal to the Appellate Board is pending in respect of the application for the patent for the main invention; or

(b) in the case of an application for a patent of addition, an appeal to the Appellate Board is pending in respect of either that application or the application for the main invention, the time within which the requirements of the Controller shall be complied with shall, on an application made by the applicant before the expiration of the period as prescribed under sub-section (1), be extended until such date as the Appellate Board may determine.

(3) If the time within which the appeal mentioned in sub-section (2) may be instituted has not expired, the Controller may extend the period as prescribed under sub-section (1), to such further period as he may determine:

Provided that if an appeal has been filed during the said further period, and the Appellate Board has granted any extension of time for complying with the requirements of the Controller, then the requirements may be complied with within the time granted by the Board.”.

20. Sections 22 to 24 of the principal Act shall be omitted.

Omission of
sections 22 to
24.
Omission of
Chapter IVA.

21. Chapter IVA of the principal Act shall be omitted.

22. In Chapter V of the principal Act, for the Chapter heading “OPPOSITION TO GRANT OF PATENT”, the Chapter heading “REPRESENTATION AND OPPOSITION PROCEEDINGS” shall be substituted.

Substitution of
heading of
Chapter V.

23. For sections 25 and 26 of the principal Act, the following sections shall be substituted, namely: —

Substitution of
new sections
for 25 and 26.

“25. (1) Where an application for a patent has been published but a patent has not been granted, any person may, in writing, represent to the Controller on the grounds of—

Representa-
tion by third
party on
patentability
and opposi-
tion to the
patent.

(a) patentability including novelty, inventive step and industrial applicability, or

(b) non-disclosure or wrongful mentioning in complete specification, source and geographical origin of biological material used in the invention and anticipation of invention by the knowledge, oral or otherwise, available within any local or indigenous community in India or elsewhere,

and the Controller shall consider and dispose of such representation within the prescribed period.

(2) Notwithstanding anything contained in sub-section (1), the person making a representation referred to in that sub-section shall not become a party to any proceeding under this Act only for the reason that he has made such representation.

(3) At any time after the grant of patent but before the expiry of a period of one year from the date of grant of a patent, any person interested may give notice of opposition to the Controller in the prescribed manner on any of the following grounds, namely:—

(a) that the patentee or the person under or through whom he claims, wrongfully obtained the invention or any part thereof from him or from a person under or through whom he claims;

(b) that the invention so far as claimed in any claim of the complete specification has been published before the priority date of the claim—

(i) in any specification filed in pursuance of an application for a patent made in India on or after the 1st day of January, 1912; or

(ii) in India or elsewhere, in any other document:

Provided that the ground specified in sub-clause (ii) shall not be available where such publication does not constitute an anticipation of the invention by virtue of sub-section (2) or sub-section (3) of section 29;

(c) that the invention so far as claimed in any claim of the complete

specification is claimed in a claim of a complete specification published on or after the priority date of the patentee's claim and filed in pursuance of an application for a patent in India, being a claim of which the priority date is earlier than that of the patentee's claim;

(d) that the invention so far as claimed in any claim of the complete specification was publicly known or publicly used in India before the priority date of that claim.

Explanation.—For the purposes of this clause, an invention relating to a process for which a patent is granted shall be deemed to have been publicly known or publicly used in India before the priority date of the claim if a product made by that process had already been imported into India before that date except where such importation has been for the purpose of reasonable trial or experiment only;

(e) that the invention so far as claimed in any claim of the complete specification is obvious and clearly does not involve any inventive step, having regard to the matter published as mentioned in clause (b) or having regard to what was used in India before the priority date of the claim;

(f) that the subject of any claim of the complete specification is not an invention within the meaning of this Act, or is not patentable under this Act;

(g) that the complete specification does not sufficiently and clearly describe the invention or the method by which it is to be performed;

(h) that the patentee has failed to disclose to the Controller the information required by section 8 or has furnished the information which in any material particular was false to his knowledge;

(i) that in the case of a patent granted on convention application, the application for patent was not made within twelve months from the date of the first application for protection for the invention made in a convention country or in India by the patentee or a person from whom he derives title;

(j) that the complete specification does not disclose or wrongly mentions the source and geographical origin of biological material used for the invention;

(k) that the invention so far as claimed in any claim of the complete specification was anticipated having regard to the knowledge, oral or otherwise, available within any local or indigenous community in India or elsewhere,

but on no other ground.

(4) (a) Where any such notice of opposition is duly given under sub-section (3), the Controller shall notify the patentee.

(b) On receipt of such notice of opposition, the Controller shall, by order in writing, constitute a Board to be known as the Opposition Board consisting of such officers as he may determine and refer such notice of opposition along with the documents to that Board for examination and submission of its recommendations to the Controller.

(c) Every Opposition Board constituted under clause (b) shall conduct the examination in accordance with such procedure as may be prescribed.

(d) On the basis of the recommendation of the Opposition Board, the Controller shall order either to maintain or to amend or to revoke the patent.

(e) In case the Controller issues an order under clause (d) that the patent can be maintained subject to amendment of the specification or any other document, the patent shall stand amended accordingly.

26. (1) Where in any opposition proceeding under this Act—

(a) the Controller finds that the invention, so far as claimed in any claim of the complete specification, was obtained from the opponent in the manner set out in clause (a) of sub-section (3) of section 25 and revokes the patent on that ground, he may, on request by such opponent made in the prescribed manner, direct that the patent shall stand amended in the name of the opponent;

In cases of "obtaining" Co-Controller may treat the patent as the patent of opponent.

(b) the Controller finds that a part of an invention described in the complete specification was so obtained from the opponent, he may pass an order requiring that the specification be amended by the exclusion of that part of the invention.

(2) Where an opponent has, before the date of the order of the Controller requiring the amendment of a complete specification referred to in clause (b) of sub-section (1), filed an application for a patent for an invention which included the whole or a part of the invention held to have been obtained from him and such application is pending, the Controller may treat such application and specification in so far as they relate to the invention held to have been obtained from him, as having been filed, for the purposes of this Act relating to the priority dates of claims of the complete specification, on the date on which the corresponding document was or was deemed to have been filed by the patentee in the earlier application but for all other purposes the application of the opponent shall be proceeded with as an application for a patent under this Act.”.

24. Section 27 of the principal Act shall be omitted.

Omission of section 27.

25. In section 28 of the principal Act,—

Amendment of section 28.

(a) for sub-section (4), the following sub-section shall be substituted, namely:—

“(4) A request or claim under the foregoing provisions of this section shall be made before the grant of patent.”;

(b) sub-section (5) shall be omitted;

(c) in sub-section (6), for the words, brackets and figure “Subject to the provisions of sub-section (5), where”, the word “Where” shall be substituted.

26. In section 31 of the principal Act, for the words “not later than six months”, the words “not later than twelve months” shall be substituted.

Amendment of section 31.

27. In section 34 of the principal Act, for the words “to accept complete specification for a patent or to grant a patent”, the words “to grant a patent” shall be substituted.

Amendment of section 34.

28. In section 35 of the principal Act, in sub-section (3), for the words “acceptance of complete specification”, the words “grant of patent” shall be substituted.

Amendment of section 35.

29. In section 36 of the principal Act, in sub-section (1), for the words “twelve months”, the words “six months” shall be substituted.

Amendment of section 36.

30. In section 37 of the principal Act,—

Amendment of section 37.

(a) in sub-section (1),—

(i) in clause (a), for the words “to accept”, the words “to grant” shall be substituted;

(ii) for the proviso, the following proviso shall be substituted, namely:—

“Provided that the application may, subject to the directions, proceed up to the stage of grant of the patent, but the application and the specification found to be in order for grant of the patent shall not be published, and no patent shall be granted in pursuance of that application.”;

(b) in sub-section (2), for the words “is accepted”, the words “is found to be in order for grant of the patent” shall be substituted.

Substitution of new section for section 39.

31. For section 39 of the principal Act, the following section shall be substituted, namely:—

Residents not to apply for patents outside India without prior permission.

“39. (1) No person resident in India shall, except under the authority of a written permit sought in the manner prescribed and granted by or on behalf of the Controller, make or cause to be made any application outside India for the grant of a patent for an invention unless—

(a) an application for a patent for the same invention has been made in India, not less than six weeks before the application outside India; and

(b) either no direction has been given under sub-section (1) of section 35 in relation to the application in India, or all such directions have been revoked.

(2) The Controller shall expeditiously dispose of every such application within a period not exceeding six weeks:

Provided that if the invention is relevant for defence purpose or atomic energy, the Controller shall not grant the permit without the prior consent of the Central Government.

(3) This section shall not apply in relation to an invention for which an application for protection has first been filed in a country outside India by a person resident outside India.”.

Substitution of heading of Chapter VIII.

32. In Chapter VIII of the principal Act, for the Chapter heading “GRANT AND SEALING OF PATENTS AND RIGHTS CONFERRED THEREBY”, the Chapter heading “GRANT OF PATENTS AND RIGHTS CONFERRED THEREBY” shall be substituted.

Substitution of new section for section 43.

33. For section 43 of the principal Act, the following section shall be substituted, namely:—

Grant of patents.

“43. (1) Where an application for a patent has been found to be in order for grant of the patent and either—

(a) the application has not been refused by the Controller by virtue of any power vested in him by this Act; or

(b) the application has not been found to be in contravention of any of the provisions of this Act,

the patent shall be granted as expeditiously as possible to the applicant or, in the case of a joint application, to the applicants jointly, with the seal of the patent office and the date on which the patent is granted shall be entered in the register.

(2) On the grant of patent, the Controller shall publish the fact that the patent has been granted and thereupon the application, specification and other documents related thereto shall be open for public inspection.”.

Amendment of section 44.

34. In section 44 of the principal Act, for the word “sealed”, at both the places where it occurs, the word “granted” shall be substituted.

35. In section 45 of the principal Act, in sub-section (3), for the words "the date of advertisement of the acceptance of the complete specification", the words "the date of publication of the application" shall be substituted. Amendment of section 45.

36. In section 48 of the principal Act, the proviso shall be omitted. Amendment of section 48.

37. In section 52 of the principal Act,—
 (a) in sub-section (1),—
 (i) for the opening words "Where a patent has been revoked", the words and figures "Where the patent has been revoked under section 64" shall be substituted;
 (ii) for the word "court", wherever it occurs, the words "Appellate Board or court" shall be substituted.
 (b) in sub-section (2), for the word "court", occurring at both the places, the words "Appellate Board or court" shall be substituted.

38. In section 53 of the principal Act,—
 (a) after sub-section (1), the following *Explanation* shall be inserted, namely:—
"Explanation.—For the purposes of this sub-section, the term of patent in case of International applications filed under the Patent Cooperation Treaty designating India, shall be twenty years from the international filing date accorded under the Patent Cooperation Treaty.";
 (b) in sub-section (2), the words "or within that period as extended under this section" shall be omitted;
 (c) sub-section (3) shall be omitted.

39. In section 54 of the principal Act,—
 (a) in sub-section (3), for the words "complete specification", occurring at both the places, the word "application" shall be substituted;
 (b) for sub-section (4), the following sub-section shall be substituted, namely:—
"(4) A patent of addition shall not be granted before grant of the patent for the main invention."

40. In section 57 of the principal Act,—
 (a) for sub-section (3), the following sub-section shall be substituted, namely:—
"(3) Any application for leave to amend an application for a patent or a complete specification or a document related thereto under this section made after the grant of patent and the nature of the proposed amendment may be published."
 (b) for sub-section (6), the following sub-section shall be substituted, namely:—
"(6) The provisions of this section shall be without prejudice to the right of an applicant for a patent to amend his specification or any other document related thereto to comply with the directions of the Controller issued before the grant of a patent."

41. For section 58 of the principal Act, the following sub-section shall be substituted, namely:— Substitution of new section for section 58.

Amendment
of specifica-
tion before
Appellate
Board or High
Court.

"58. (1) In any proceeding before the Appellate Board or High Court for the revocation of a patent, the Appellate Board or the High Court, as the case may be, may, subject to the provisions contained in section 59, allow the patentee to amend his complete specification in such manner and subject to such terms as to costs, advertisement or otherwise, as the Appellate Board or the High Court may think fit, and if in any proceedings for revocation the Appellate Board or the High Court decides that the patent is invalid, it may allow the specification to be amended under this section instead of revoking the patent.

(2) Where an application for an order under this section is made to the Appellate Board or the High Court, the applicant shall give notice of the application to the Controller, and the Controller shall be entitled to appear and be heard, and shall appear if so directed by the Appellate Board or the High Court.

(3) Copies of all orders of the Appellate Board or the High Court allowing the patentee to amend the specification shall be transmitted by the Appellate Board or the High Court to the Controller who shall on receipt thereof cause an entry thereof and reference thereto to be made in the register.”.

Amendment
of section 59.

42. In section 59 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:—

"(2) Where after the date of grant of patent any amendment of the specification or any other document related thereto, is allowed by the Controller or by the Appellate Board or the High Court, as the case may be,—

(a) the amendment shall for all purposes be deemed to form part of the specification along with other documents related thereto;

(b) the fact that the specification or any other document related thereto has been amended shall be published as expeditiously as possible; and

(c) the right of the applicant or patentee to make amendment shall not be called in question except on the ground of fraud.”.

Amendment
of section 60.

43. In section 60 of the principal Act, in sub-section (1), for the words, brackets and figures “prescribed period or within that period as extended under sub-section (3) of section 53”, the words, figures and brackets “period prescribed under section 53 or within such period as allowed under sub-section (4) of section 142” shall be substituted.

Amendment
of section 63.

44. In section 63 of the principal Act,—

(a) in sub-section (2), for the word “advertise”, the word “publish” shall be substituted;

(b) in sub-section (3), for the words “such advertisement”, the words “such publication” shall be substituted.

Amendment
of section 64.

45. In section 64 of the principal Act, in sub-section (1), for the words “on petition of any person interested or of the Central Government or on a counter-claim in a suit for infringement of the patent, be revoked by the High Court”, the words “be revoked on petition of any person interested or of the Central Government by the Appellate Board or on a counter-claim in a suit for infringement of the patent by the High Court” shall be substituted.

Substitution of
new section
for section 65.

46. For section 65 of the principal Act, the following section shall be substituted, namely:—

"65. (1) Where at any time after grant of a patent, the Central Government is satisfied that a patent is for an invention relating to atomic energy for which no patent can be granted under sub-section (1) of section 20 of the Atomic Energy Act, 1962, it may direct the Controller to revoke the patent, and thereupon the Controller, after giving notice, to the patentee and every other person whose name has been entered in the register as having an interest in the patent, and after giving them an opportunity of being heard, may revoke the patent.

(2) In any proceedings under sub-section (1), the Controller may allow the patentee to amend the complete specification in such manner as he considers necessary instead of revoking the patent.”.

47. For section 68 of the principal Act, the following section shall be substituted, namely:—

“68. An assignment of a patent or of a share in a patent, a mortgage, licence or the creation of any other interest in a patent shall not be valid unless the same were in writing and the agreement between the parties concerned is reduced to the form of a document embodying all the terms and conditions governing their rights and obligations and duly executed.”.

48. In section 74 of the principal Act,—

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) For the purposes of this Act, there shall be a patent office, with such name as the Central Government may, by notification in the Official Gazette, specify.”;

(b) sub-section (2) shall be omitted.

49. After section 92 of the principal Act, the following section shall be inserted, namely:—

‘92A. (1) Compulsory licence shall be available for manufacture and export of patented pharmaceutical products to any country having insufficient or no manufacturing capacity in the pharmaceutical sector for the concerned product to address public health problems, provided a compulsory licence has been granted by such country.

(2) The Controller shall, on receipt of an application in the prescribed manner, grant a compulsory licence solely for manufacture and export of the concerned pharmaceutical product to such country under such terms and conditions as may be specified and published by him.

(3) The provisions of sub-sections (1) and (2) shall be without prejudice to the extent to which pharmaceutical products produced under a compulsory licence can be exported under any other provision of this Act.

*Explanation.—*For the purposes of this section, “pharmaceutical products” means any patented product, or product manufactured through a patented process, of the pharmaceutical sector needed to address public health problems and shall be inclusive of ingredients necessary for their manufacture and diagnostic kits required for their use.’.

50. In section 100 of the principal Act, in sub-section (3), for the words “acceptance of the complete specification in respect of the patent”, the words “grant of the patent” shall be substituted.

51. In section 105 of the principal Act, in sub-section (4), for the words “after the date of advertisement of acceptance of the complete specification of a patent”, the words “after the publication of grant of a patent” shall be substituted.

52. In section 107A of the principal Act, in clause (a),—

(a) for the words “using or selling”, the words “using, selling or importing” shall be substituted;

(b) for the words “use or sale”, the words “use, sale or import” shall be substituted.

Substitution of new section for section 68.
Assignments, etc. not to be valid unless in writing and duly executed.

Amendment of section 74.

Insertion of new section 92A.

Compulsory licence for export of patented pharmaceutical products in certain exceptional circumstances.

Amendment of section 100.

Amendment of section 105.

Amendment of section 107A.

Amendment
of section
113.

53. In section 113 of the principal Act,—

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) If in any proceedings before the Appellate Board or a High Court for the revocation of a patent under section 64 and section 104, as the case may be, the validity of any claim of a specification is contested and that claim is found by the Appellate Board or the High Court to be valid, the Appellate Board or the High Court may certify that the validity of that claim was contested in those proceedings and was upheld.”;

(b) for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) Nothing contained in this section shall be construed as authorising courts or Appellate Board hearing appeals from decrees or orders in suits for infringement or petitions for revocation, as the case may be, to pass orders for costs on the scale referred to therein.”.

Amendment
of section
116.

Amendment
of section
117A.

54. In section 116 of the principal Act, in sub-section (2), clause (c) shall be omitted.

55. In section 117A of the principal Act, in sub-section (2), for the words and figures “section 20, section 25, section 27, section 28”, the words, figures and brackets “section 20, sub-sections (3) and (4) of section 25, section 28” shall be substituted.

Amendment
of section
117D.

56. In section 117D of the principal Act, in sub-section (1), for the words “for rectification of the register”, the words and figures “for revocation of a patent before the Appellate Board under section 64 and an application for rectification of the register” shall be substituted.

Substitution of
new section
for section
117G.

Transfer of
pending
proceedings to
Appellate
Board.

57. For section 117G of the principal Act, the following section shall be substituted, namely:—

“117G All cases of appeals against any order or decision of the Controller and all cases pertaining to revocation of patent other than on a counter-claim in a suit for infringement and rectification of register pending before any High Court, shall be transferred to the Appellate Board from such date as may be notified by the Central Government in the Official Gazette and the Appellate Board may proceed with the matter either *de novo* or from the stage it was so transferred.”.

Amendment
of section
120.

Amendment
of section
122.

Amendment
of section
123.

Amendment
of section
126.

58. In section 120 of the principal Act, for the words “ten thousand rupees”, the words “one lakh rupees” shall be substituted.

59. In section 122 of the principal Act, in sub-section (1), for the words “twenty thousand rupees”, the words “ten lakh rupees” shall be substituted.

60. In section 123 of the principal Act, for the words “ten thousand rupees in the case of a first offence and forty thousand rupees”, the words “one lakh rupees in the case of a first offence and five lakh rupees” shall be substituted.

61. In section 126 of the principal Act,—

(a) in sub-section (1), in clause (c), sub-clause (i) shall be omitted;

(b) in sub-section (2), for the words, brackets and figures “the Patents (Amendment) Act, 2002”, the words, brackets and figures “the Patents (Amendment) Act, 2003” shall be substituted. 38 of 2002.

Substitution of
new section
for section
133.

62. For section 133 of the principal Act, the following section shall be substituted, namely:—

“133. Any country, which is a signatory or party or a group of countries, union of countries or inter-governmental organisations which are signatories or parties to an international, regional or bi-lateral treaty, convention or arrangement to which India is also a signatory or party and which affords to the applicants for patents in India or to citizens of India similar privileges as are granted to their own citizens or citizens to their member countries in respect of the grant of patents and protection of patent rights shall be a convention country or convention countries for the purposes of this Act.”.

Convention countries.

63. In section 135 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:—

Amendment of section 135.

“(3) In case of an application filed under the Patent Cooperation Treaty designating India and claiming priority from a previously filed application in India, the provisions of sub-sections (1) and (2) shall apply as if the previously filed application were the basic application:

Provided that a request for examination under section 11B shall be made only for one of the applications filed in India.”.

64. In section 138 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:—

Amendment of section 138.

“(1) Where a convention application is made in accordance with the provisions of this Chapter, the applicant shall furnish, when required by the Controller, in addition to the complete specification, copies of the specifications or corresponding documents filed or deposited by the applicant in the patent office of the convention country as referred to in section 133 or otherwise verified to the satisfaction of the Controller, within the prescribed period from the date of communication by the Controller.”.

65. In section 142 of the principal Act, in sub-section (4), for the words “complete specification”, the word “application” shall be substituted.

Amendment of section 142.

66. For section 143 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 143.
Restrictions upon publication of specification.

“143. Subject to the provisions of Chapter VII, an application for a patent, and any specification filed in pursuance thereof, shall not, except with the consent of the applicant, be published by the Controller before the expiration of the period prescribed under sub-section (1) of section 11A or before the same is open to public inspection in pursuance of sub-section (3) of section 11A or section 43.”.

67. For section 145 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 145..
Publication of official journal.

“145. The Controller shall publish periodically an official journal which shall contain such information as may be required to be published by or under the provisions of this Act or any rule made thereunder.”.

68. In section 151 of the principal Act,—

Amendment of section 151.

(a) in sub-section (1), for the words “the High Court”, occurring at both the places, the words “the High Court or the Appellate Board” shall be substituted;

(b) in sub-section (3), for the word “courts”, the words “Appellate Board or the courts, as the case may be,” shall be substituted.

69. Section 152 of the principal Act shall be omitted.

Omission of section 152.

Amendment of
section 159.

70. In section 159 of the principle Act, in sub-section (2),—

(a) for clauses (ia) and (ib), the following clauses shall be substituted, namely:—

“(ia) the period which the Controller may allow for filing of statement and undertaking for in respect of applications under sub-section (1), the period within which the details relating to processing of applications may be filed before the Controller and the details to be furnished by the applicant to the Controller under sub-section (2), of section 8;

(ib) the period within which a reference to the deposit of materials shall be made in the specification under sub-clause (A) of clause (ii) of the proviso to sub-section (4) of section 10;

(ic) the period for which application for patent shall not be open to the public under sub-section (1) and the manner in which the applicant may request to the Controller to publish his application under sub-section (2) of section 11A;

(id) the manner of making the request for examination for an application for patent and the period within which such examination shall be made under sub-sections (1) and (3) of section 11B.

(ie) the manner in which an application for withdrawal of an application for grant of a patent shall be made and the period within which a request for examination from the date of revocation of secrecy directions shall be made under the proviso to sub-section (4) of section 11B.

(b) in clause (ii), for the word “advertised”, the word “published” shall be substituted;

(c) clause (v) shall be omitted.

71. Section 163 of the principal Act shall be omitted.

Omission of
section 163.

Transitional
provision.

72. (1) Notwithstanding the repeal of Chapter IVA of the principal Act, by section 21 of this Act, every application for the grant of exclusive marketing rights filed under that Chapter before the commencement of Patents (Amendment) Act, 2003, in respect of a claim for a patent covered under sub-section (2) of section 5, such application shall be deemed to be treated as a request for examination for grant of patent under sub-section (3) of section 11B of the principal Act, as amended by this Act.

(2) Every exclusive right to sell or distribute any article or substance in India granted before the commencement of the Patents (Amendment) Act, 2003, shall continue to be effective with the same terms and conditions on which it was granted.

(3) Without prejudice to any of the provisions of the principal Act, the applications in respect of which exclusive rights have been granted before the commencement of the Patents (Amendment) Act, 2003, shall be examined for the grant of patent immediately on the commencement of this Act.

(4) All suits relating to infringement of the exclusive right granted before commencement of the Patents (Amendment) Act, 2003, shall be dealt with in the same manner as if they were suits concerning infringement of patents under Chapter XVIII of the principal Act.

(5) The examination and investigation required as carried out for the grant of exclusive right shall not be deemed in any way to warrant the validity of any grant of exclusive right to sell or distribute, and no liability shall be incurred by the Central Government or any officer thereof by reason of, or in connection with, any such examination or investigation or any report or other proceedings consequent thereon.

STATEMENT OF OBJECTS AND REASONS

The law relating to patents is contained in the Patents Act, 1970 which came into force on the 20th April, 1972. This Act was amended in March, 1999 and June, 2002 to meet India's obligations under the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs) which forms part of the agreement establishing the World Trade Organisation (WTO). The amendments primarily focussed on the obligations which came into force from the 1st January, 1995 (in respect of amendments made in March, 1999) and obligations which came into force from the 1st January, 2000 (in respect of amendments notified in June, 2002). While making the latter amendments, opportunity was also utilized to provide necessary and adequate safeguards for protection of public interest, national security, biodiversity, traditional knowledge, etc. and also to simplify certain procedural aspects. The Joint Committee of Parliament which examined the amendments notified in June, 2002 provided in the legislation effective flexibilities to enable an appropriate, timely and efficient response to national and public interest requirements /concerns, especially those relating to public health and nutrition. The law is now required to be amended further in respect of India's obligations under the TRIPs Agreement, which are due from 1st January, 2005.

2. Given the importance of the issues, the Government undertook broad-based and extensive consultations involving different interest groups on aspects critical to the changes which may be necessary in the Patents Act, 1970.

3. While considering amendments to the Act, efforts have been made to make the law not only TRIPs compliant but also to simplify and rationalize the procedure governing grant of patents so as to make the system more user-friendly.

4. Some of the salient features of the Bill are as under:—

(a) to introduce product patent protection in all fields of technology as per Article 27 of the TRIPs Agreement;

(b) to delete the provisions relating to exclusive marketing rights and to introduce a transitional provision for safeguarding exclusive marketing rights already granted;

(c) to introduce a provision for enabling grant of compulsory licence for export of medicines to countries which have insufficient or no manufacturing capacity to meet emergent public health situations. This provision is in accordance with the agreement reached on August 30, 2003 for implementation of Para 6 of the Doha Declaration on TRIPs and Public Health;

(d) to amend and strengthen the provisions relating to national security;

(e) to amend the provisions relating to Appellate Board with a view to extending its jurisdiction to revocation of patents also;

(f) to amend the provisions relating to opposition procedures;

(g) to amend certain provisions with a view to harmonizing them with the Patent Cooperation Treaty to which India is a signatory;

(h) to amend the provisions relating to time lines for different activities with a view to introducing flexibility and reducing the processing time for patent application;

(i) to amend provisions of the Act with a view to simplifying and rationalizing the procedure aimed at benefiting the users.

5. The Bill seeks to achieve the above objects. The notes on clauses explain the various provisions of Bill.

NEW DELHI;

ARUN JAITLEY.

The 19th December, 2003.

Notes on clauses

Clause 1. – Sub-clause (1) of this clause provides for the short title of the proposed legislation. Sub-clause (2) provides for appointment of different dates for commencement of different provisions of the Bill, when enacted, because provisions like those relating to revocation of patent by the Intellectual Property Appellate Board are new and require providing for necessary mechanism, which may take some time.

Clause 2. – This clause seeks to amend section 2 of the Patents Act, 1970 (herein referred to as the Act) relating to definitions and interpretation. While some new definitions are being added, some of them have been omitted and some of the existing definitions have been made simple and comprehensive. The new definitions, which have been added, are those of "Budapest Treaty" and "Opposition Board". The definitions of "food" and "medicine or drug" have been omitted. The definitions which are amended are those relating to "convention application", "government undertaking", "High Court" and "patent". While it is necessary to define new terms and expressions used in the Bill, it has also become necessary to modify some other definitions in accordance with changing requirements, present practices, etc.

Sub-clause (a) seeks to define "Budapest Treaty" as India has recently joined this treaty and its provisions are now applicable to India. *Sub-clause (b)* seeks to modify clause (d) of sub-section (1) of section 2 of the Act so that it would not be necessary to notify the convention countries as and when new countries join the treaties. This is consequential to the changes made in section 133 of the Act *vide* clause 62 of the Bill. *Sub-clause (c)* seeks to omit the definition of term "food" as it will not be relevant with the proposed introduction of product patent in all fields of technologies including this sector. *Sub-clause (d)* seeks to amend the definition of term "government undertaking" by including a sub-clause in section 2(1)(h), namely "by an institution wholly or substantially financed by the Government" and by deletion of the words "and includes the Council of Scientific and Industrial Research and any other Institution which is financed wholly or for the major part by the said council" from clause (h) in order to make a generic provision encompassing all institutions which are financed wholly or partially by the Government within the ambit of "government undertaking". *Sub-clause (e)* seeks to substitute the definition of the expression "High Court" in section 2(1)(i) in order to provide a general provision, which will avoid the necessity to amend the Act as and when a new State or Union territory is created. *Sub-clause (f)* seeks, *inter alia*, to omit the definition of the term "medicines or drug" provided in clause (l) of sub-section (1) of section 2 of the Act as this will not be relevant with the proposed introduction of product patent protection in all fields of technologies. It also provides a definition for the words "Opposition Board" in order to deal with any opposition filed in the patent office for revocation of patent. It further seeks to define "patent" to mean a patent for any invention granted under the Patents Act, 1970.

Clause 3. — This clause seeks to amend section 3 of the Act, which relates to inventions not patentable. This clause seeks to substitute the words "new use" with the words "mere new use" to provide drafting consistency and to exclude grant of patent for mere new use of known substances.

Clause 4. – This clause seeks to omit section 5 of this Act, relating to inventions where only methods or processes of manufacture are patentable so as to allow product patent protection regime in all fields of technology including the areas of food, medicine

and drugs. This is to make the provisions of the Patents Act, 1970 in conformity with India's obligations under the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs).

Clause 5. — This clause seeks to amend section 7 of the Act, which relates to form of application. Sub-clause (a) proposes a new sub-section (1B) to clarify that the filing date of every application referred to in sub-section (1A) and its complete specification processed by the patent office as designated office or elected office shall be the international filing date accorded under the Patent Cooperation Treaty (PCT). Sub-clause (b) seeks to substitute the word "owner" occurring in sub-section (3) with word "person" so as to clarify that the person claiming to be the true and first inventor need not be the owner alone. Sub-clause (c) seeks to substitute sub-section (4) so as to clarify that every application (not being a convention application or an application filed under Patent Cooperation Treaty designating India) shall be accompanied by a provisional or a complete specification. This is to align the provisions of the Act with those of the Patent Cooperation Treaty.

Clause 6. — This clause seeks to amend section 8 of the Act, which relates to information and undertaking regarding foreign applications so as to enable filing of particulars of corresponding applications being prosecuted in countries outside India either along with the application or subsequently. Sub-clause (a) seeks to amend the provisions of sub-section (1) by replacing the words "within such period as the Controller may good and sufficient reason allow" with the words "within the prescribed period as the Controller may allow" in order to rationalize the procedure. This sub-clause also seeks to substitute the words "up to the date of acceptance of his complete specification in India" occurring in clause (b) of sub-section (1) of section 8 with the words "up to the date of grant of patent in India" as the stage of acceptance is being replaced by the stage of grant of patent. Sub-clause (b) seeks to substitute the provisions of sub-section (2) of section 8 in order to rationalize the procedure for submission of information relating to foreign applications to the Controller within the prescribed time.

Clause 7. — This clause seeks to amend section 9 of the Act, which relates to provisional and complete specifications. Sub-clause (a) seeks to substitute sub-section (1) so as to insert the reference of applications filed under the Patent Cooperation Treaty (PCT) designating India therein and also to reduce the time period for grant of patent. Sub-clause (b) seeks to amend sub-section (2) by inserting a proviso thereto so as to harmonize it with the provisions of sub-section (1). Sub-clause (c) seeks to substitute sub-section (3) to harmonize it with the provisions of sub-section (1). Sub-clause (d) seeks to substitute the words "the acceptance of complete specification" with the words "grant of patent" in order to delete the provisions for acceptance which would subsume in the process for examination and grant.

Clause 8. — This clause seeks to amend section 10 of the Act, which relates to contents of the specifications. Sub-clause (a) seeks to substitute the words "before the acceptance of application" occurring in sub-section (3) with the words "before the application is found in order for grant of patent" as the procedure for acceptance of application is being simplified. Sub-clause (b) seeks to amend the proviso to sub-section (4) by amending clause (ii) thereof by inserting a reference to the international depositary authority under the Budapest Treaty. This sub-clause also seeks to substitute sub-clause (a) to the proviso in order to enable the applicant to mention the reference of the material in the complete specification within the time-limit prescribed, which was deposited in the international depositary authority. Sub-clause (c) seeks to substitute sub-section (4A) by deleting clause (ii) as same has been shifted to section 7 *vide* clause 5 of the Bill.

Clause 9. — This clause seeks to amend section 11 of the Act, which relates to priority dates of claims of a complete specification. Sub-clause (a) seeks to provide a

new provision namely, sub-section (3A) relating to priority claim based on a previously filed application in India provided the same is filed within twelve months from the date of that application. This amendment is being proposed to harmonize the provisions of the Act with PCT. Sub-clause (b) seeks to insert a reference of new sub-section (3A) in sub-section (6), which is a consequential amendment to the amendment proposed *vide* sub-clause (a).

Clause 10. – This clause seeks to amend section 11A of the Act, which relates to publication of patent applications. Sub-clause (a) seeks to substitute sub-sections (1), (2) and (3). These new sub-sections seek to provide flexibility in the time period for making the patent application open to the public with the overall objective of providing progressive reduction in the processing time of applications in Patent Offices so as to achieve international standards. Sub-clause (b) seeks to provide a new sub-section (7) relating to provisional rights to the applicant on the publication of his application as per international practice. However, the applicant shall not be entitled to institute any proceedings for infringement until the patent has been granted.

Clause 11. – This clause seeks to amend section 11B of the Act, which relates to request for examination of patent applications. Sub-clause (a) seeks to substitute sub-section (1), which deals with filing of request for examination within 48 months from the date of filing of applications for patent. It is proposed to enable the Central Government to lay down appropriate time frame in the rules so as streamline the process and also for bringing progressive reduction in the processing time of applications. Sub-clause (b) seeks to omit sub-section (2) which deals with the time period for making request for examination within twelve months from the date of commencement of the Patents (Amendment) Act, 2002. As necessary rules could be made under sub-section (1), this sub-section has become redundant. Sub-clause (c) seeks to substitute sub-section (3) which deals with filing of request in respect of applications filed under sub-section (2) of section 5 after the 31st December, 2004 so as to provide flexibility in making request for examination of those applications in order to achieve progressive reduction in processing time of applications in the Patent Office. Sub-clause (d) seeks to amend sub-section (4) by deleting the reference of sub-section (2), which is consequential in nature. This clause also seeks to substitute the proviso to sub-section (4) so as to provide the facility of withdrawing of application in which the applicant is not interested and also provides flexibility in making request for examination in case the secrecy direction issued under section 35 of the Act has been revoked.

Clause 12. – This clause seeks to amend section 12 of the Act, which deals with examination of application. Sub-clause (a) seeks to amend sub-section (1) so as to enable the Controller to refer application, specification and other documents to an examiner “at the earliest” with the overall objective of providing progressive reduction in the processing time of applications in Patent Office thereby achieving international standards. Sub-clause (b) seeks to amend sub-section (2) by substituting the words “a period of eighteen months from the date of such reference” with the words “such period as may be prescribed” in order to reduce the processing time for grant of patent by appropriately laying down the same by rules.

Clause 13. – This clause seeks to amend section 13 of the Act, which deals with search for anticipation by previous publication and by prior claim. It seeks to substitute the words “it has been accepted” with the words “the grant of a patent” in view of removal of provisions relating to acceptance of patent applications.

Clause 14. – This clause seeks to substitute sections 14 and 15 of the Act, which relate to consideration of report of examiner by Controller and power of the Controller to refuse or require amendments in the application in certain cases, respectively. This clause provides clarity in section 14 by including the reference of “other documents” as well as communication of objections to applicant expeditiously as far as possible in

order to expedite the grant of patent. This clause also seeks to substitute section 15 to empower the Controller to require the applicant to amend the application, specification or other documents to his satisfaction before proceeding with the application in case he is satisfied that the application, specification or other documents do not comply with the provisions of the Act or the rules made thereunder and in case the applicant fails to meet such requirements, he could refuse the application.

Clause 15. – This clause seeks to amend section 16 of the Act, which relates to the power of Controller to make orders respecting division of application. Sub-clause (a) seeks to substitute the words “before the acceptance of complete specification” with the words “before the grant of patent”. This consequential amendment is necessary in view of the removal of provisions relating to acceptance of application. Sub-clause (b) seeks to substitute the Explanation to this section clarifying the provisions relating to examination of divisional applications when the request for examination is filed within the prescribed period in order to harmonize with the provisions of section 45 and to clarify as to when the request for examination should be filed for divisional applications.

Clause 16. – This clause seeks to amend section 17 of the Act, which relates to power of Controller to make orders respecting dating of application. It seeks to replace the words “before acceptance of the complete specification” with the words “before the grant of patent”. This is a consequential amendment in view of the removal of provisions relating to acceptance of complete specification.

Clause 17. – This clause seeks to amend section 18 of the Act, which relates to powers of Controller in cases of anticipation. Sub-clause (a) seeks to substitute the words “to accept the complete specification” with the words “the application”. This is a consequential amendment in view of the removal of the provisions relating to acceptance of complete specification. Sub-clause (b) seeks to omit sub-section (4) as the same will become redundant with the proposed modification of pre-grant opposition procedure.

Clause 18. – This clause seeks to amend section 19 of the Act, which relates to powers of Controller in case of potential infringement. It proposes to delete reference to proceedings under section 25. This is consequential to the proposed modification of pre-grant opposition procedure.

Clause 19. – This clause seeks to substitute section 21 of the Act, which relates to time for putting application in order for acceptance. This clause proposes to empower the Central Government to lay down, by rules, the outer time-limit to put the applications in order for grant of a patent instead of the time period of twelve months, as at present.

Clause 20. – This clause seeks to omit sections 22, 23 and 24 of the Act, which relate to acceptance of complete specification, advertisement of acceptance of complete specification and effect of acceptance of complete specification respectively. These are consequential amendments necessary in view of removal of the provisions relating to acceptance of the complete specification and publication of complete specification after acceptance and according provisional rights to the applicant from the publication of the application.

Clause 21. – This clause seeks to omit Chapter IV A of the Act, which relates to Exclusive Marketing Rights. The omission of said chapter is being proposed consequent to the introduction of product patent regime, *inter alia*, in the field of inventions relating to medicines and drugs.

Clause 22. – This clause seeks to substitute the heading of Chapter V of the Act, which relates to “OPPOSITION TO GRANT OF PATENT” with “REPRESENTATION AND OPPOSITION PROCEEDINGS”. This is a consequential amendment to the

modification in pre-grant opposition procedure and proposed introduction of post-grant opposition procedure for revocation of patent in the Patent Office.

Clause 23. – This clause seeks to substitute sections 25 and 26 of the Act. Sub-section (1) of the proposed new section 25 seeks to provide for making representation by any person before the Controller before the grant of patent but after the publication of the application on the ground of patentability including novelty, inventive step and industrial applicability and also on the ground of non-disclosure or wrongful mentioning in complete specification, source and geographical origin of biological material used in the invention and anticipation of invention by the knowledge, oral or otherwise available within any local or indigenous community in India or elsewhere to provide safeguard by way of pre-grant representation by any person against grant of patent. Proposed new sub-section (2) of section 25 seeks to provide for excluding the persons from becoming party to any proceeding under this Act only for the reason that he has made such representation.

Sub-section (3) seeks to provide for opposition to the grant of patent for revoking the patent within one year from the date of grant of patent on the same grounds, which are available under pre-grant opposition in the existing Act.

Sub-section (4) seeks to provide for constituting an Opposition Board to dispose off the opposition and procedure for conducting the examination of such opposition by the Board. This sub-section also empowers Controller to order either to maintain or to amend or to revoke the patent on the recommendation of the Opposition Board. This new sub-section further provides that if the specification or other documents are amended by the order of the Controller, the patent shall stand amended accordingly.

This clause also seeks to substitute section 26 of the Act, which relates to the matter in cases of "obtaining". This is consequent to the introduction of post-grant opposition procedure before the Patent Office and also consequential to the removal of provisions relating to acceptance of the application.

Clause 24. – This clause seeks to omit section 27 of the Act, which relates to refusal of patent without opposition. By introduction of pre-grant representation by third party after publication of the application but before grant of patent, the said section has become redundant.

Clause 25. – This clause seeks to amend section 28 of the Act, which relates to mentioning of inventor as such in patent. Sub-clause (a) seeks to substitute sub-section (4) so as to restrict the making of a request for mentioning the name of the inventor before the grant of patent, which is consequential to the proposed removal of the provisions for acceptance of the application. Sub-clause (b) seeks to omit sub-section (5), which is consequential to the removal of pre-grant opposition before the patent office. Sub-clause (c) seeks to amend the provisions of sub-section (6) by deleting the reference to the sub-section (5) as a consequential amendment to the omission of sub-section (5).

Clause 26. – This clause seeks to amend section 31, which relates to anticipation by public display, etc. of the invention. It proposes to substitute the words "not later than six months" with the words "not later than twelve months" in order to make the provision inventor-friendly by allowing more time to him for filing patent application after invention has been displayed or published.

Clause 27. – This clause seeks to amend section 34 of the Act, which relates to no anticipation under certain circumstances by suitably omitting reference to acceptance of complete specification. This amendment is consequential to the removal of the provision for acceptance of the complete specification.

Clause 28. – This clause seeks to amend section 35 of the Act, which relates to

secrecy direction relating to inventions relevant for defence purposes. It proposes to amend sub-section (3) by replacing the words "acceptance of complete specification" with the words "grant of patent". This amendment is consequential to the removal of the provisions for acceptance of the complete specification.

Clause 29. – This clause seeks to amend section 36 of the Act, which relates to review of secrecy directions periodically. It is proposed to reduce the time period of twelve months as at present to six months to review the secrecy direction in order to expedite the grant of patents and make the system user friendly by early review of the secrecy direction.

Clause 30. – This clause seeks to amend section 37 of the Act, which relates to consequences of secrecy directions in so far as it relates to acceptance of the complete specification with grant of patent, as consequential to the proposed removal of provisions for acceptance of the complete specification.

Clause 31. – This clause seeks to substitute section 39 of the Act, which relates to prohibition to apply under certain circumstances for patents relevant for defence purposes, etc., with a new provision to protect security interest of India and to prevent defence related inventions to be filed outside India by persons resident in India. This clause also proposes that all such applications shall be disposed off within a period not exceeding six weeks by the Controller. However, in case the inventions are relevant for defence purpose or atomic energy, the Controller shall not grant permit without prior consent of the Central Government. This is being proposed mainly for the reasons that many inventions have dual use and, therefore, all applications need to be screened in national interest.

Clause 32. – This clause seeks to substitute the heading of Chapter VIII of the Act, which relates to grant and sealing of patents and rights conferred thereby, with a new heading "GRANT OF PATENTS AND RIGHTS CONFERRED THEREBY". This is being done to make it in conformity with the changes made in the chapter for dispensing with the system of filing of request for sealing of patent in order to expedite the grant of patent.

Clause 33. – This clause seeks to substitute section 43 of the Act, which relates to grant and sealing of patent with a new section to deal with grant of patents. It proposes to dispense with the pre-grant opposition system. This clause also proposes to dispense with the provisions relating to filing of request for sealing of a patent. The proposal is intended to simplify the procedure in order to reduce the time for grant of patent. Some of the proposed changes are consequential in nature. This clause also proposes to insert a provision requiring the Controller to publish the patent on its grant and make the application, specification and other documents related thereto open for public inspection.

Clause 34. – This clause seeks to amend section 44 of the Act, which relates to amendment of patent granted to deceased applicant. This clause proposes to replace the word "sealed", wherever it occurs with the word "granted". This is consequential to the changes proposed in section 43 *vide* clause 33.

Clause 35. – This clause seeks to amend section 45 of the Act, which relates to date of patent. This clause proposes to replace the words "the date of advertisement of the acceptance of complete specification" with the words "the date of publication of the application" as a consequential amendment to the provisions proposed by clause 10 for providing provisional right from the date of publication of the application.

Clause 36. – This clause seeks to amend section 48 of the Act, which relates to rights of patentees. It is proposed to omit the proviso to section 48, as with the introduction of product patent protection in all fields of technology, the said proviso has become redundant.

Clause 37. – This clause seeks to amend section 52 of the Act, which relates to grant of patent to true and first inventor where it has been obtained by another in fraud of him. Sub-clause (a) seeks to amend sub-section (1) for replacing the words “where a patent has been revoked” with the words “where the patent has been revoked under section 64”. This sub-clause also proposes to replace the word “court” occurring in the said sub-section with the words “Appellate Board or Court” so as to provide jurisdiction to the Appellate Board also in matters of revocation of patent wrongfully obtained. Sub-clause (b) seeks to amend the provisions of sub-section (2) for replacing the word “Court” occurring at both the places therein with the words “Appellate Board or Court”. This amendment is consequential to the proposed enhancement of jurisdiction of Appellate Board for revocation of patent.

Clause 38. – This clause seeks to amend section 53 of the Act, which relates to term of patent. Sub-clause (a) seeks to insert an *Explanation* to sub-section (1) clarifying the term of patent in respect of applications filed under PCT from the International filing date accorded under PCT. Sub-clause (b) seeks to amend sub-section (2) by deleting the words “or within that period as extended under this section”. This amendment is proposed with a view to provide flexibility in the provision for time period for payment of renewal fees which is proposed to be prescribed by the rules. Sub-clause (c) seeks to omit the provisions of sub-section (3) which is consequential to the amendment proposed in sub-clause (b).

Clause 39. – This clause seeks to amend section 54 of the Act, which relates to patents of addition. Sub-clause (a) seeks to amend sub-section (3) replacing the words “complete specification” with the word “application” as the date of patent has been changed from the date of filing of the complete specification to the date of filing of the application. Sub-clause (b) seeks to substitute the provisions of sub-section (4) by a new provision. This is a consequential change in view of proposed amendment in section 43 of the Act *vide* clause 33, dispensing with the system of filing of request for sealing of patent.

Clause 40. – This clause seeks to amend section 57 of the Act, which relates to amendment of application and specification before Controller by substituting sub-sections (3) and (6). This amendment is consequential to the removal of provisions of acceptance of the application.

Clause 41. – This clause seeks to substitute section 58 of the Act, which relates to amendment of specification before High Court. It is proposed to enlarge the scope of the provision of existing section 58 by enhancing the jurisdiction of Appellate Board in amendment of specifications and also to enable implementation of the orders of the Appellate Board.

Clause 42. – This clause seeks to amend section 59 of the Act, which relates to supplementary provisions as to amendment of application or specification. It proposes to substitute the existing provisions of sub-section (2) by replacing the provisions for advertisement of reference of acceptance of complete specification and other documents with grant of patent and inserting reference to “Appellate Board” before High Court. This clause also provides to publish the amendments as expeditiously as possible. These amendments are consequential to the removal of the provisions relating to acceptance of specification and proposed enhancement of jurisdiction of Appellate Board and also with a view to introduce flexibility in the matter of publication.

Clause 43. – This clause seeks to amend section 60 of the Act, which relates to applications for restoration of lapsed patents. This clause proposes to amend the provisions of sub-section (1) so as to provide an opportunity to patentee to restore his patent on default of payment of renewal fee for first time also.

Clause 44. – This clause seeks to amend section 63 of the Act, which relates to surrender of patents so as to enable the Controller to publish the offer of surrender of patent instead of advertising the same. This is to ensure flexibility in the publication.

Clause 45. – This clause seeks to amend section 64 of the Act, which relates to revocation of patent so as to confer jurisdiction to the Appellate Board in matters of revocation of patent as the matter is of a technical nature.

Clause 46. – This clause seeks to substitute section 65 of the Act, which relates to revocation of patent or amendment of complete specification on directions from Central Government in cases relating to atomic energy. The amendments proposed are consequential to the proposed removal of provision for acceptance of patent application.

Clause 47. – This clause seeks to substitute section 68 of the Act, which relates to assignments, etc., not to be valid unless in writing and duly registered. The amendment is being proposed with a view to avoid repetition of the procedure for registration of assignment, which is already contained in section 69.

Clause 48. – This clause seeks to amend section 74 of the Act, which relates to Patent Office and its branches. Sub-clause (a) seeks to replace the existing provisions of sub-section (1) with a new provision for providing flexibility to the Central Government to notify the name of Patent Office, in order to provide flexibility in providing appropriate name of the Patent Office. Sub-clause (b) seeks to omit the provisions of sub-section (2), which has become infructuous.

Clause 49. – This clause seeks to insert a new section 92A in the Act relating to the grant of compulsory licence for manufacture and export of the patented pharmaceutical products in certain exceptional circumstances. The proposed provision provides for grant of licence to manufacture and export patented pharmaceutical products to a country if the applicant has obtained a compulsory licence in that country to which he proposes to export the particular product and in that country there is insufficient or no manufacturing capacity in respect of that particular product. The amendment seeks to implement the agreement on Para 6 of Doha Declaration on TRIPs Agreement and Public Health.

Clause 50. – This clause seeks to amend section 100 of the Act, which relates to power of Central Government to use inventions for purposes of Government. This clause seeks to amend sub-section (3) by replacing the words “acceptance of complete specification” with the words “grant of patent”. This is a consequential amendment due to removal of provisions of acceptance of complete specification.

Clause 51. – This clause seeks to amend section 105 of the Act, which relates to power of court to make declaration as to non-infringement. This is a consequential amendment to the removal of provisions relating to acceptance of complete specification and changing the requirement of “advertisement” to that of “publication” to ensure flexibility.

Clause 52. – This clause seeks to amend section 107A of the Act, which relates to certain acts not to be considered as infringement. It is proposed to include importing also within the purview of the section with a view to making the provisions more effective from the user’s point of view.

Clause 53. – This clause seeks to amend section 113 of the Act, which relates to certificate of validity of specification and costs of subsequent suits for infringement thereof. This clause seeks to replace the provisions of sub-sections (1) and (3) by incorporating the words “Appellate Board”, before “High Court”. Sub-clause (a) seeks to substitute the provisions of sub-section (1) by replacing the words “High Court” with the words “Appellate Board or High Court”. Sub-clause (b) seeks to replace the provisions of sub-section (3) by inserting the words “Appellate Board”. These

amendments are proposed with a view to enhancing the jurisdiction of Appellate Board under section 64.

Clause 54. – This clause seeks to amend section 116 of the Act, which relates to Appellate Board. This clause proposes to omit clause (c) of sub-section (2) in view of advisability of having persons possessing scientific qualifications as Technical Members.

Clause 55. – This clause seeks to amend section 117A of the Act, which relates to appeals to the Appellate Board as a consequential one to the proposed new provisions of sub-sections (3) and (4) of section 25 of the Act *vide* clause 23 and omission of section 27 *vide* clause 24.

Clause 56. – This clause seeks to amend section 117D of the Act, which relates to procedure for application for rectification, etc., before Appellate Board. It is proposed to empower the Central Government to prescribe the forms of applications for revocation of a patent by the Appellate Board under section 64 and the application for rectification of the register under section 71 of the Act.

Clause 57. – This clause seeks to substitute section 117G of the Act, which relates to transfer of pending proceedings to Appellate Board. It seeks to replace the existing provision enabling the transfer of cases pertaining to revocation of patent other than on a counter claim in a suit for infringement pending before High Court to the Appellate Board. This amendment is consequential to the proposed enhancement of jurisdiction of Appellate Board under section 64.

Clause 58. – This clause seeks to amend section 120 of the Act, which relates to unauthorised claim of patent rights. This clause seeks to enhance the penalty to one lakh rupees from ten thousand rupees as at present. This amendment is being proposed with a view to strengthening the enforcement provisions of the Act.

Clause 59. – This clause seeks to amend section 122 of the Act, which relates to refusal or failure to supply information. This clause seeks to amend the provisions of sub-section (1) by increasing the penalty from twenty thousand rupees, as at present to ten lakh rupees. This amendment is being proposed with a view to strengthening the penalty provisions.

Clause 60. – This clause seeks to amend section 123 of the Act, which relates to practice by non-registered patent agents. This clause seeks to amend the provisions of sub-section (1) by increasing the penalty from ten thousand rupees and forty thousand rupees, as at present, to one lakh rupees and five lakh rupees, respectively. These amendments are being proposed with a view to strengthening the penalty provisions.

Clause 61. – This clause seeks to amend section 126 of the Act, which relates to qualifications for registration as Patent Agents. Sub-clause (a) seeks to amend sub-section (1) with a view to prescribe uniform qualification and to improve the quality of profession as the subject matter is scientific and technical in nature. Sub-clause (b) seeks to amend sub-section (2) to protect the patent agents registered before the commencement of the proposed Patents (Amendment) Act, 2003.

Clause 62. – This clause seeks to substitute section 133 of the Act, which relates to notification as to convention countries. The new provision seeks to provide for recognising convention countries automatically with their becoming members of international treaties, etc., to which India will also be a party and which allow to citizens of India the same privileges as are accorded to its citizens and other member countries. This is to avoid notification of such countries as and when they become the members of any treaty, convention or arrangement to which India is also a signatory or party and thereby causing delay in affording necessary privileges.

Clause 63. – This clause seeks to amend section 135 of the Act, which relates to convention applications. This clause seeks to insert a new sub-section (3) to the said section to harmonize the provisions of the Act with PCT and for examination of only one application either filed directly in India or filed in India under PCT. This amendment is being proposed to avoid duplicacy in examination of applications and to avoid erroneous grant of two patents on same application.

Clause 64. – This clause seeks to amend section 138 of the Act, which relates to supplementary provisions as to convention applications. This clause seeks to substitute the provisions of sub-section (1) by replacing it with a new provision which is intended to harmonize the provision with the amended provisions of section 133. These amendments are being proposed to simplify the procedure and also to harmonize with the provisions of PCT relating to submission of priority documents.

Clause 65. – This clause seeks to amend section 142 of the Act, which relates to fees. This clause seeks to substitute the words “complete specification” with the words “application” in sub-section (4). This amendment is consequential to the amendment proposed in section 45 relating to date of patent *vide* clause 35.

Clause 66. – This clause seeks to substitute section 143 of the Act, which relates to restriction upon publication of specifications. This is consequential to the changes made in section 11A and omission of section 43.

Clause 67. – This clause seeks to substitute section 145 of the Act, which relates to publication of patented inventions so as to enable the Controller to periodically publish an official journal containing such information as may be required to be published by or under the provisions of the Act or any rule made thereunder or any other information. This amendment is being proposed with a view to enabling the Patent Office to publish the patent related information in its official journal instead of in the Gazette of India in order to make available such information at one place and also to avoid delay in publication of such information.

Clause 68. – This clause seeks to amend section 151 of the Act, which relates to transmission of orders of Court to Controller. This clause seeks to substitute the words “High Court”, wherever they occur, with the words “High Court or Appellate Board”. This amendment is consequential to the proposed enhancement of jurisdiction of Appellate Board relating to revocation of patents under section 64.

Clause 69. – This clause seeks to omit section 152 of the Act, relating to transmission of copies of specifications, etc., and inspection thereof as this section has lost its relevance due to advancement of information technology and its use in the patent office.

Clause 70. – This clause seeks to amend section 159 of the Act, which relates to the powers of the Central Government to make rules. The amendments proposed in this clause are consequential to the changes made in various provisions of the Act.

Clause 71. – This clause seeks to omit section 163 of the Act, which relates to amendment of the Trade and Merchandise Marks Act, 1958 (43 of 1958) as the same has outlived its purpose.

Clause 72. – This clause seeks to provide a transitional provision consequent to grant of Exclusive Marketing Rights under Chapter IVA which is being proposed to be omitted *vide* clause 21. It seeks to provide provisions for protecting the Exclusive Right already granted before commencement of the Patents (Amendment) Act, 2003. This clause also proposes that all the applications for grant of Exclusive Marketing Rights filed before commencement of the Patents (Amendment) Act, 2003 be treated as request for examination for grant of patent under sub-section (3) of section 11B. This clause also proposes that the applications in respect of which Exclusive Rights have

already been granted before commencement of the Patents (Amendment) Act, 2003 be examined for the grant of patent immediately on commencement of this Act. Further, it proposes that all suits relating to infringement of Exclusive Marketing Rights granted before commencement of the Patents (Amendment) Act, 2003 be dealt with in the same manner as if they were suits concerning infringement of patent under Chapter XVIII of the Act. It is also proposed that examination and investigation required and carried out for the grant of Exclusive Rights shall not be deemed in any way to warrant the validity of any grant of Exclusive Marketing Rights.

FINANCIAL MEMORANDUM

The Bill which seeks to amend various provisions of the Patents Act is mainly intended to introduce product patent protection in the fields of food, drugs and medicines and also to simplify and rationalize procedures governing grant of patents. The Government has already undertaken the strengthening and modernisation of Patent Offices and the project is under active implementation. The project, *inter alia*, addresses requirements of the Patent Office in terms of the procedural amendments being contemplated through the Bill. As such, no additional expenditure, both recurring and non-recurring, from the Consolidated Fund of India is envisaged at this stage.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (a) of Clause 6 of the Bill seeks to amend sub-section (1) of section 8 of the Patents Act, 1970 relating to submitting of information and undertaking regarding foreign application which empowers the Central Government to make rules specifying the time within which such information may be filed by the applicant. Sub-clause (b) of the said clause 6 seeks to substitute sub-section (2) of section 8 of the Patents Act, 1970. The proposed new sub-section (2) *inter alia* empowers the Central Government to make rules laying down the details of application relating to processing of such application in a country outside India, which an applicant may furnish to the Controller and the period within which such details of information may be furnished.

2. Clause 8 of the Bill, *inter alia* seeks to substitute sub-clause (a) of sub-section (4) of section 10 relating to contents of specifications. The said sub-clause (a) empowers the Central Government to make rules specifying the time within which the reference to the deposit of biological material may be made in the specification.

3. Clause 10 of the Bill seeks to amend section 11A of the Act *inter alia* empowering the Central Government to make rules laying down the period within which an application for Patent shall not ordinarily be open to the public under sub-section (1) of section 11A and the manner of making a request to the controller for the publication of the application and the period.

4. Clause 11 of the Bill seeks to substitute section 11B of the Act *inter alia* empowering the Central Government to make rules laying down the manner of making a request for examination of an application for a patent and the period within which such request shall be made and also the manner and period of making a request for withdrawal of such application.

5. Clause 12 of the Bill seeks to amend section 12 of the Act *inter alia* empowering the Central Government to make rules laying down the period within which the examiner may make the report to the Controller under sub-section (2) of section 12.

6. Clause 14 of the Bill seeks to substitute sections 14 and 15 of the Act. The proposed new section 14 *inter alia* empowers the Central Government to make rules to lay down the period within which the controller shall hear the applicant on the objections in respect of his application for a patent.

7. Clause 15 of the Bill, seeks to amend the provisions of section 16 relating to power of the Controller to make orders respecting division of application. Sub-clause (b) of the said clause seeks to substitute the provisions of *Explanation* to the said section *inter alia* empowering the Central Government to make rules specifying the time for making a request for examination in case of divisional application.

8. Clause 19 of the Bill seeks to substitute section 21 of the Act *inter alia* empowering the Central Government to make rules laying down the period within which an applicant is required to comply with all requirements imposed on him by or under the Act failing which the application shall be deemed to have been abandoned. Sub-section (3) of the said section empowers the Controller to extend the period prescribed under sub-section (1) to such further period as may be laid down by the Central Government by rules.

9. Clause 23 of the Bill seeks to substitute sections 25 and 26 of the Act. The proposed new section 25 *inter alia* empowers the Central Government to make rules laying down the period within which the Controller shall consider and dispose of the representations referred to in that section. The Central Government may also make rules laying down the procedure, which may be followed by the Opposition Board in conducting the examination and submission of its recommendation to the Controller and the manner of making of notice of opposition. Sub-clause (a) of sub-section (1) of proposed new section 26 of the Act relating

to wrongful obtaining, *inter alia* empowers the Central Government to make rules relating to manner of making request by an interested person to the Controller under the Act.

10. Clause 31 of the Bill seeks to substitute section 39 relating to residents not to apply for patent outside India without prior permission. Sub-section (1) of section 39 empowers the Central Government to make rules relating to the manner of applying to the Controller for prior permission.

11. Clause 49 of the Bill seeks to insert a new section 92A in the Act. Sub-section (2) of the proposed section enables the Central Government to lay down rules specifying the manner of making of the applications for compulsory license for export of the patented pharmaceutical products in certain circumstances.

12. Clause 64 of the Bill seeks to substitute sub-section (1) of section 138 of the Act. The proposed sub-section (1) *inter alia* empowers the Central Government to lay down the period within which copies of specifications or corresponding document, etc., may be filed with the Controller by an applicant in respect of a convention application.

13. Clause 70 of the Bill seeks to amend section 159 of the Act *inter alia* to lay down the matters in respect of which rules may be made by the Central Government under the said section.

The matters in respect of which rules may be made under the afore-mentioned provisions are matters of procedure or administrative details and it is not practicable to provide them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

G. C. MALHOTRA,
Secretary General.